

## Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:PSI:B05

PLR-103523-21

Date:

August 10, 2021

In Re:

## LEGEND

Taxpayer =

State =

Address =

BIN =

Year 1 =

Dear :

This letter responds to your authorized representative's letter dated January 28, 2021, submitted on behalf of Taxpayer, requesting an extension of time to file an amended Form 8609, Low-Income Housing Credit Allocation and Certification, with respect to an election made for purposes of § 42(g) under § 142(d)(4)(B) (made applicable by § 42(g)(4)) of the Internal Revenue Code, pursuant to §§ 301.9100-1 and 301.9100-3 of the Procedure and Administration Regulations.

According to the information submitted and representations made, Taxpayer, a partnership for federal income purposes, owns and operates project in State. The project is located at Address and identified with a building identification number (BIN).

The project was placed in service in Year 1. On the Form 8609 filed with respect to the project, the box on line 10d was inadvertently checked to make the election for deep rent skewing under § 142(d)(4)(B). Taxpayer's intent to not make this election is evidenced by Taxpayer's contemporaneous documentation.

Section 42(g) provides rules defining a qualified low-income housing project. Section 42(g)(4) makes applicable to § 42 projects the special rule under § 142(d)(4) for deep rent-skewing. Section 142(d)(4)(B) provides that a project is a deep rent skewed project if the owner of the project elects to have § 142(d)(4) apply and, at all times during the qualified project period, the project meets the following requirements: (i) 15 percent or more of the low-income units in the project are occupied by individuals whose income is 40 percent or less of area median gross income; (ii) the gross rent with respect to each low-income unit in the project does not exceed 30 percent of the applicable income limit that applies to individuals occupying the unit; and (iii) the gross rent with respect to each low-income unit in the project does not exceed 50 percent of the average gross rent with respect to units of comparable size that are not occupied by individuals who meet the applicable income limit.

Section 42(l)(1) describes the requisite certifications with respect to any qualified low-income building for the first taxable year of the credit period (first-year certifications). In the case of a failure to make the required certification on the date prescribed for it, unless it is shown that the failure is due to reasonable cause and not to willful neglect, no credit is to be allowable by reason of § 42(a) for the building for any taxable year ending before the certification is made.

Section 301.9100-7T(a)(2)(i) of the temporary Procedure and Administration Regulations provides that the election under § 142(d)(4)(B) must be made by the due date (taking extensions into account) of the tax return for the first taxable year for which the election is to be effective. Section 301.9100-7T(a)(3)(i) provides that the election under § 142(d)(4)(B) must be made by attaching a statement to the tax return for the taxable year for which the election is to be effective. The statement must (A) contain the name, address, and taxpayer identification number of the electing taxpayer; (B) identify the election; (C) indicate the section of the Code under which the election is being made; (D) specify, as applicable, the period for which the election is being made and/or the property or other items to which the election is to apply; and (E) provide any information required by the relevant statutory provisions and any information necessary to show that the taxpayer is entitled to the election. For purposes of § 42, Form 8609 serves the purpose of the statement for making the § 142(d)(4)(B) election and the information required by § 301.9100-7T(a)(3)(i). Section 301.9100-7T(a)(4)(i) provides that the election under § 142(d)(4)(B) is irrevocable.

Section 1.42-1(h) of the Income Tax Regulations provides that a completed Form 8609 must be filed by the building owner with the IRS. The requirements for completing and filing Form 8609 are addressed in the instructions to the form.

The instructions to Form 8609 provide that the building owner must make a one-time submission of Form 8609 to the Low-Income Housing Credit (LIHC) Unit at the IRS Philadelphia campus. The building owner must file the original of the Form 8609 with the LIHC Unit no later than the due date (including extensions) of its first tax return with which it is filing Form 8609-A, Annual Statement for Low-Income Housing Credit.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make an election.

Section 301.9100-1(b) defines the term “regulatory election” as including an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin.

Under § 301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time under the rules set forth in §§ 301.9100-2 and 301.9100-3 to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Code, except E, G, H, and I.

Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making elections that do not meet the requirements of § 301.9100-2.

Requests for relief under § 301.9100-3(a) will be granted when the taxpayer provides evidence (including affidavits described in § 301.9100-3(e)) to establish that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government.

Based solely on the facts submitted and the representations made, we conclude that the requirements of §§ 301.9100-1 and 301.9100-3 have been met. Accordingly, Taxpayer is granted an extension of time to make the election for purposes of § 42(g) under § 142(d)(4)(B) for the project by filing within 120 days from the date of this letter an amended Form 8609 that includes the intended election. The amended Form 8609 (along with a copy of this letter) must be filed with the LIHC Unit at the following address provided in the instructions to Form 8609:

Department of the Treasury  
Internal Revenue Service Center  
Philadelphia, PA 19255-0549

Copies of this letter are enclosed for this purpose.

Except as specifically set forth above, we express or imply no opinion concerning the federal tax consequences of the facts described above under any provisions of the

Code or regulations. In particular, we express or imply no opinion on whether the Form 8609 for the project was timely or correctly filed for purposes other than the election for purposes of § 42(g) under § 142(d)(4)(B), or whether the project is a qualified low-income housing project and any buildings in the project qualify for the low-income housing credit under § 42.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The ruling contained in this letter is based on the information submitted and representations made by Taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for ruling, it is subject to verification on examination.

In accordance with the Power of Attorney on file with this office, copies of this letter are being sent to your authorized representatives.

Sincerely,

Associate Chief Counsel  
(Passthroughs and Special Industries)

By: \_\_\_\_\_  
JAMES A. HOLMES  
Senior Counsel, Branch 5  
Office of Associate Chief Counsel  
(Passthroughs and Special Industries)

Enclosures (2):  
Copy of this letter  
Copy for § 6110 purposes

cc: